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# CORPORATE FRAUD IN RELATION TO WHITE COLLAR CRIME IN INDIA

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## I. ABSTRACT

White-collar crime was a term first used by Edwin Sutherland in 1939 to denote crimes other than those that did not involve violence, but which engaged businesses, professionals or government officials in them with the sole purpose of taking the money outside of their income. In FY 2023 there were about 13000 bank frauds reported in India by the RBI. It was recognized that the regulatory system is unsatisfactory and requires the evaluation of the role of auditors on an urgent basis. Banks and loaning agencies have not been doing their best in these circumstances, which is affected by the greasing of professional management.

The abstract stresses that in India a comprehensive approach, including the introduction of new statutes, and increasing corporate governance across the board must be put in place in order to effectively and with integrity, sort out the corporate frauds issue. India can establish itself as a more trustworthy and responsible business environment by becoming aware of and thus, working towards resolving business crimes like the theories of white- collar thievery and derailment. This will be achieved by safeguarding the investors and promoting the economic growth. Developing a culture of ethics and transparency within an organization and promoting it in the long run could be the most effective strategy for stopping corporate fraud.

## II. INTRODUCTION

In recent years, crime has increased several times, especially corporate fraud. Corporate fraud is part of the broader concept of white-collar crime, originally proposed by the American criminologist Edwin Sutherland in 1939 in a speech to the American Sociological Association, where he defined white-collar crime as "a crime committed by a person of respectable and respectable high social status during his

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tenure." This marked a major departure in theoretical thinking, devoting criminological research to both dominant and minority groups.

Corporate scandals and frauds are as old as the mountains of India. In the 1950s came the infamous LIC/Mundhra scam, independent India's first major financial fraud. Decade after decade, followed with its set of scams, the most well-known being the Harshad Mehta scandal. These frauds are probed into by law-enforcing authorities under the relevant provisions of the Indian Penal Code, 1860 (IPC). The Companies Act, 1956 did not define fraud. Legally there was no necessity for being separate as Lord Macaulay's STK dealt adequately with all such offences. The Companies Act 2008 was the first legislative proposal to replace the Companies Act 1956 based on Dr J.J. Iran Committee Report. The major corporate scams of 2013 instigated a parliamentary standing committee to suggest two new legislative changes: a separate definition of fraud in section 447 of the Companies Act 2013 (the Act), inquiry into serious fraud Office (SFIO) under Section 212 of the Act to investigate these frauds. Section 447 in the Act combines various sections of IPC, such as Section 405, Section 415, and section 463, which deal with criminal trust, cheating, forgery or falsification of accounts.

## III. CORPORATE FRAUD DEFINED

Any unlawful conduct aimed at making a profit that an individual or company undertakes is known as corporate fraud. It includes theft, bribery, false financial data, embezzlement, etc. This type of crime is non-violent in nature. In accordance with Section 17 of the Indian Contract Act, 1872, the term fraud encompasses any of the subsequent actions carried out by a party to a contract, or with their consent, or through their agent, with the intention of misleading a third party or convincing them to sign the agreement.

The concept of fraud, as the RBI puts it in the definition section, "refers to" fraud, which is any intentional act committed or disfigured by a person or other individual in manuals or accounts.

As per Section 447 of Companies Act, 2013: "Fraud" in relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of

position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss. "Wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled. "Wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.

## IV. CONCEPT OF CORPORATE FRAUD

In India, scams are an integral part of history. Therefore, certain regulations have been established to curb the growth of corporate fraud, such as the Companies Act of 2013. Corporate fraud is a part of white-collar crime, which is also known as corporate crimes, which are a part of white-collar crime. Corporate frauds cause significant damage not only to organizations but also to the economy of the country.

Such fraud causes serious impacts on organizations and national economies. Organizationally, fraud can lead to financial losses, reputational damage, legal and regulatory problems, loss of investor confidence, and demoralization of staff. Economically, Fraud slows economic growth, increases unemployment, leads to inefficient allocation of resources, undermines confidence in the financial system, and may also cause a loss of government revenue and increased income inequality. Such can be the costs of corporate fraud: forcing organizations into bankruptcy and laying off a lot of workers, thereby reducing investors' confidence. In general, it may diffuse impacts on both individual companies and on the economy as a whole, further underlining the requirement for the prevention and addressing of fraudulent activities.

## V. CAUSES OF CORPORATE FRAUD

Some of the various causes of the growth of corporate fraud are listed below:

1. **Lack of corporate governance** When management disregards the moral and legal obligations to the company, its workers it is considered a lack of corporate governance. This can also relate to the board of directors' misconduct.

2. **Technological Advancements**: As there is development and improvement in tools, there is also advancement to cause fraud in different manners.
3. **Greed:** It makes a person forget his ethical values and want more. One causes a lot of harm to the organization out of greed for money or for promotion.

## VI. TYPES OF CORPORATE FRAUD

1. **Bribery**: Bribery means the involvement of money, goods, or services with the ill intent to influence or gain advantage of a situation. These activities have an influential effect both on the individual and the organization where he or she is working. For example, the 2G scam.
2. **Financial Statement Fraud**: It includes the fabrication of bank statements by any organization to deceive creditors about the company's fiscal position.
3. **Money laundering**; The process of converting black money into white money through illegal means like corruption and gambling is known as money laundering.
4. **Scam**s: This is another type of fraud done with any individual or any organization where the scammers use techniques to extract the organization's resources and funds without having any prior knowledge of the organization. Scammers are always one step ahead, as one needs to be cautious while scamming anyone.
5. **Bank fraud** is defined as any fraudulent activity carried out by an employee of the bank or borrower that attempts to gain an undue advantage over another, which results in financial loss to the bank. For example, loan fraud, mortgage fraud, etc.; Nirav Modi PNB Bank scam; Vijay Mallya Kingfisher Airlines scam.
6. **Embezzlement**. Embezzlement is when an individual who has received money for a specific purpose uses it for another reason than the intended purpose.

## VII. REGULATIONS MADE BY THE GOVERNMENT OF INDIA TO CURB THE GROWING FRAUDS IN INDIA

As scams and frauds increased gradually, it was also draining the economy's wealth. To scrutinize these scams, the government took various measures and regulations to

govern the corporate frauds. Here are some of the key elements to combating corporate fraud and white-collar crime in India.

**A. Companies Act, 2013**

The Companies Act, 2013 provides punishment related to frauds committed by any individual against any company. The provision of punishment mentioned under **Section 447** of the Companies Act, 2013 states that any individual who's guilty of fraud will be punished with imprisonment up to 10 years or with a fine, and the amount of the fine may be extended to three times the amount of fraud involved.

The provision for punishment for false statements is given under **Section 447A**. It says that any individual who makes a false allegation in any return, report, or other document that is related to the registrar will be punished with maximum imprisonment for three years, a fine of five thousand rupees, or both. The provision for punishment for forgery is given under

**B. Sections 448, 449** says that any person who is considered guilty of forgery with respect to the company shall be punished with imprisonment, a penalty of up to five thousand rupees or both will be imposed for three years or the fine thrice the amount of fraud.

**C. Section 450**

It deals with the punishment where no specific penalty is provided. i.e. if the employee or the officer commits any offence or contravenes the provision of the companies Act, where no specific penalty or punishment is provided.

**Fine –** Up to Rs.10,000 plus a fine up to Rs 1000 per day (if an offence is a Continuing one)

It deals in case of repeated default. If a company or an officer commits an offence punishable-

- either with fine or
- with imprisonment and

- where the same offence is committed for the 2nd or ensuing occasions within a period of 3 years then-
- The company and every officer who is in default shall be punishable with fine- Twice the amount of fine for such offence in addition to any imprisonment provided for that offence.

Applicability of the section is not to the offence repeated after a period of three (03) years from the commitment of the first offence.

**D. Section 452** deals with punishment for wrongful withholding of property i.e. if any officer, employee or ex-employee of the company has wrongfully obtained the possession of the property or wrongful withholding of the property. It includes cash of the company.

**Fine –** A employee or officer will be punishable with fine which shall not be less than Rs 1 lakh which may extend to Rs 5 lakh.

**E. Section 453** It deals with the punishment for inappropriate use of the limited or private limited word without the registration/or removes the word limited or private limited while entering into a contract or acting on the behalf of the company.

**F. Under Section 211** of the Companies Act, 2013, an agency is established for the investigation of fraud known as the **Serious Fraud Investigation Office (SFIO).** It is a multifunctional agency consisting of experts who detect fraudulent activities. The investigating team consists of experts from various sectors like banking, forensic audit, taxation, information technology, and capital markets. They have the power to arrest the individual if found guilty of an offense under the Companies Act.

**G. The PMLA, or Prevention of Money Laundering Act of 2002.**

In order to stop money laundering operations and seize assets derived from money laundering, the Indian Parliament passed the Prevention of Money Laundering Act, 2002 (PMLA). Corporate fraud in India is prevented by the PMLA's requirements.

Money laundering is a criminal offense that falls under **Section 3** of PMLA. It states that anyone who knowingly or unknowingly tries to benefit or indulge a third party, or who is actually engaged in any activity involving the proceeds of crime—including their acquisition, concealment, or possession—will be found guilty of the money laundering offense.

**H. Section 4** of the Act includes the provisions for money laundering punishments. The punishment consists of rigorous imprisonment for a minimum of three years, with a maximum sentence of seven years, as well as a fine. The punishment consists of rigorous imprisonment for a minimum of three years, with a maximum sentence of seven years, as well as a fine.

## VIII. ENFORCEMENT DIRECTORATE

Under the Department of Revenue, Ministry of Finance, and Government of India, the Enforcement Department (ED) is a multidisciplinary agency tasked with looking into allegations of money laundering and breaking foreign exchange regulations. The enforcement directorate has been entrusted with conducting an inquiry in search of the assets acquired through the offense in compliance with PMLA. seizing the property temporarily, ensuring that all the culprits are brought to accountability, and having the Special Court confiscate the property.

The SC recently restricted the authority of the ED to detain PMLA suspects. In a ruling, according to Supreme Court Judges Oka and Ujjal Bhuyan, if the accused is summoned, they must contact the appropriate court to hold him in custody. After the special court took up the matter, the judgment limited the powers of the Enforcement Directorate (ED) to make arrests. The bench ruled that after an individual appears in court, the ED would need to submit a second application for detention. Under Section 88 of the CrPC, the special court may yet order the accused to provide the bond; however, this is merely an undertaking.

The dual requirements of Section 45 of the PMLA do not apply to it since it does not constitute a grant of bail. Based on an appeal Tarsem Lal[2] filed against ED, the court's ruling upheld the denial of anticipatory bail by the Punjab and Haryana High Court.

### A. Securities and Exchange Board of India Act,1992

The Securities and Exchange Board of India (SEBI) is a regulatory body that keeps a close eye on fraud. It is a non-statutory body that was established on April 12, 1988, by a Government of India resolution, and its rules went into effect on January 30, 1992. In addition to teaching Indian investors about the securities market, one of SEBI's primary responsibilities is to protect their interests.

In **Section 15E**, the fine for an asset management organization that violates policies and procedures is discussed. The fine can go up to rupees one crore, but it cannot be less than rupees one lakh. Insider training, withholding shares from investors, failing to reimburse investors, and other unfair and fraudulent trade practises are all punishable by SEBI.

### B. Competition Commission of India

Price fixing and other anti-competitive behaviour are prevented by the Competition Commission of India (CCI), which upholds competition rules and regulations.

## IX. LEADING CASES

### A. 2G Spectrum Scam

Politicians and representatives of the United Progressive Alliance (UPA) were embroiled in the political issue known as the 2G spectrum case[3]. The minister of telecoms at the time was A. Raja. It is reported that they participated in the distribution of 122 2G spectrum licenses to the telecom operators in an event that provided a couple of telecom providers a benefit. A. Raja was accused of being responsible for the government's downfall. The sale of 2G spectrum licenses at a very low cost resulted in a revenue loss of 1760 million Euros to the Government of India. In addition, he

[2] Tarsem Lal v. Enforcement Directorate Criminal Appeal
NO.2608 OF 2024 (Arising out of Special Leave Petition (Crl.) No. 121 of 2024)
[3] Subramanian Swamy v. A, RAJA, (2012) SLP (Crl.) No.1688, Supreme Court of India

was charged with breaking all laws and regulations and disobeying the Finance, Law, and Justice Ministers' recommendations while granting telecom operators licenses. Nearly six years after the Supreme Court revoked 122 2G licenses, all defendants in what was dubbed one of the worst scams in Indian history—including Kanimozhi, the daughter of former telecom minister.

The prosecution had "miserably" failed to substantiate the allegations made against any of the accused, as determined by the court." No evidence of guilt is found in files kept under constant court supervision at demonstrations where allegedly the accused was put on a date. I'm not afraid to state that the prosecution has, regrettably, failed.

**B. The National Herald Case**

The National Herald's case[4] concerns the purported misappropriation of assets connected to a share transaction worth over $2,000 million. The National Herald was founded and edited by Jawaharlal Nehru before he became the first Prime Minister of India. The paper went out of business in 2008 after incurring a debt of over ₹90 million, which was allegedly unpaid. In his complaint, Swami alleged that the Young Inda company paid only Rs 50 lakh to take over AJL's debt of Rs 90.25 crore to the Congress. No political organization is permitted to engage in any third-party transactions under the Income Tax Act. According to Swamy, the Gandhi family engaged in fraudulent behaviour by operating the passport office on government-delivered land for publishing newspapers and earning rental income worth crores of rupees. In addition to Rahul Gandhi and Sonia Gandhi, the case also includes the late Congress leaders Motilal Vohra and Oscar Fernandes, as well as entrepreneurs Sam Pitroda (of Toyota Motor Company) and journalist Suman Dubey. Despite this, the shareholders of AJL were not adequately addressed. Injured shareholders waited years to get their money back. The court is recording evidence and is not sure if Swamy has standing to challenge the legality of the transactions between AJL and Young India. Such unreasonable delays undermine citizens' confidence in the administration of justice. Special courts should be established to investigate large-scale fraud involving public funds and corporate fraud.

[4] Subramanian Swamy v. Sonia Gandhi & Ors., (2015) CS(OS) N0. 2511/2012

### C. Harshad Mehta Stock Market Scam

The most significant fraudster in India's financial and stock markets is Harshad Mehta. Many rich people suffered because of this man's fraud, some committed suicide because of his manipulation. Many banks were forced to close down and suffered losses due to his actions. His intelligence and ability to deceive in the stock and financial markets made him a skilled individual in committing fraud. At the beginning of 1991–1992, he became known in India for his expertise in the stock and financial markets. The 1992 scam[5], which involved him buying shares from the Bombay Stock Exchange for billions of dollars, resulted in a loss of 3500–4000 crores to the financial system and caused essentially the world's most significant crash in the Indian stock market. He was arrested and later he was released on bail.

### D. Vijay Mallya Scam

In order to sustain his business, he borrowed substantial amounts of money from multiple banks but did not make any payments. Many banks declared him bankrupt and did not give him more loans, but he continued to take them from different banks using his powerful position. Another immoral practice was for his airline to not pay the PF and salaries of its employees, let alone taxes collected from the government. Due to substantial financial losses, he refused to compensate his employees and shut down his business. To avoid repaying the loan and criminal liability, he left for another country in 2016 and has not returned since. After the fraud, he fled to the UK in 2016 but hasn't been back since. He denied all allegations of fraud and deception by the banks and his employees and wrote a letter promising to repay all the money with appropriate interest. He fails to deliver on his commitments and behaves as if he has not paid the dues. In 2017, the Supreme Court ordered him to appear in court several times, but he ignored the order. The court therefore charged him with contempt of court and fraud and ordered the government to seek his extradition. The Supreme Court held him in contempt for not providing information to the court during its recent hearing and gave him a

[5] Harshad Shantilal. Mehta v. Central Bureau of Investigation, (2001) 8 SCC 257, Supreme Court of India

final opportunity to appear before the judge[6], either through himself or counsel. However, the Indian government sued London for sending Vijay Mallya back to his country, where he would be tried. Due to his political and influential status, he was detained in each instance after being extradited to a London court.

## X. CONCLUSION

Ultimately, corporate fraud and white-collar crime are serious problems in economies and societies worldwide, including India. Complex and devastating financial breaches can lead to a loss of trust, harm employees or investors, and cause significant economic consequences. Even so, these difficulties can be successfully avoided and addressed by adopting a proactive attitude and combining organizational, legal, and regulatory initiatives. In my view, it's all about the corporate world. Fraud and white-collar crime can have devastating consequences, but their frequency and impact can be greatly reduced through preventative measures.

[6] State Bank of India & Ors., (2016) SLP (C) No. 6828/2016 Supreme Court of India